

**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
Division of Workers' Compensation**

INITIAL STATEMENT OF REASONS

Subject Matter of Proposed Amendments to Regulations: Workers' Compensation – Payments for Medical Treatment and Medical-Legal Services

The Administrative Director of the Division of Workers' Compensation, pursuant to the authority granted by Labor Code Sections 127, 133, 5307.1, 5307.3 and 5307.6, proposes to amend the Official Medical Fee Schedule, (a document that is incorporated by reference into Title 8, California Code of Regulations, Section 9791.1) and Title 8, California Code of Regulations, Sections 9791.1, 9792.5, 9793 and 9795. Sections 9791.1 and 9792.5 concern fees for medical treatment in workers' compensation cases. Sections 9793 and 9795 concern fees for medical-legal expenses in workers' compensation cases.

Time and Place of Public Hearing:

Date: Thursday, September 13, 2001

Time: 10:00 a.m.

Place: Auditorium

Gov. Hiram Johnson State Office Bldg.

455 Golden Gate Avenue

San Francisco, California 94102

The public hearing room is wheelchair accessible. Persons requiring additional accommodation of a disability are requested to alert the contact person identified in the Notice of Proposed Rulemaking..

AN IMPORTANT PROCEDURAL NOTE ABOUT THIS RULEMAKING:

The Official Medical Fee Schedule ("OMFS") and the Medical-Legal Fee Schedule ("MLFS") "establish or fix rates, prices, or tariffs" within the meaning of Government Code Section 11340.9(g) and are therefore not subject to Article 5 of the Administrative Procedure Act (commencing at Government Code Section 11346.)

This rulemaking proceeding to amend the OMFS and MLFS are being conducted under the Administrative Director's rulemaking power under Labor Code Sections 5307.1, 5307.3 and 5307.6. This regulatory proceeding is subject to the procedural requirements of Labor Code Sections 5307.1 and 5307.4. This Initial Statement of Reasons and the accompanying Notice are being prepared to comply with the procedural requirements of Labor Code Section 5307.4 and for the convenience of the regulated public to assist the regulated public in analyzing and commenting on this non-APA rulemaking proceeding.

BACKGROUND TO REGULATORY PROCEEDING:

Labor Code Section 5307.1 requires the Administrative Director of the Division of Workers' Compensation to "adopt and revise, no less frequently than biennially, an official medical fee schedule

which shall establish reasonable maximum fees paid for medical services provided pursuant to [Division 4 of the Labor Code]." The Official Medical Fee Schedule is incorporated by reference into Section 9791.1 as it is an extremely large document that cannot be published in its entirety in the Code of Regulations. The Official Medical Fee Schedule [OMFS] was last revised effective April 1, 1999.

The proposed amendments to the OMFS and related sections of the regulations are technical revisions, clarifications and corrections of typographical errors as follows:

A. REVISIONS TO THE OFFICIAL MEDICAL FEE SCHEDULE

1. PROPOSED AMENDMENTS TO THE OFFICIAL MEDICAL FEE SCHEDULE ITSELF.

AN IMPORTANT NOTE CONCERNING THE EFFECTIVE DATE OF THE PROPOSED AMENDMENTS TO THE OMFS

In order to give the regulated public time to train their staff and implement the proposed amendments set forth below, the Division will ask the Office of Administrative Law for the proposed amendments to have an effective date of *thirty (30) days* after their filing with the Secretary of State. The Office of Administrative Law will fill in the effective date as *thirty (30) days* after the date on which the amendments as adopted are filed with the Secretary of State.

The effective dates for the proposed amendments set forth below will be made available on the Division's website (http://www.dir.ca.gov/workers'_comp.html) as soon as their effective date is received from the Office of Administrative Law.

a. GENERAL INFORMATION AND INSTRUCTIONS FOR USE SECTION:

Section Amended: Services Covered

The existing section clarifies the application of the OMFS for the regulated public.

Specific Purpose of Amendment:

The proposed amendment will insert the following text after the second paragraph in the "Services Covered" section on page 1 of the OMFS of the OMFS:

No facility except those specified in the immediately preceding paragraph may charge or collect a facility fee for services provided on an outpatient basis.

Factual Basis That Amendment is Necessary:

This amendment is required because some providers that lack the appropriate license or certification are charging a facility fee. The original intent behind this provision when the OMFS was adopted was that only licensed or certified facilities could charge a facility fee. This amendment is necessary to achieve the original intent of the provision. Portions of the regulated community have expressed confusion on this point.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

Section Amended: Fee Computation and Billing Procedures

The existing section informs the regulated public how the conversion factors used in the OMFS are adjusted and where they are listed in the OMFS.

Specific Purpose of Amendment:

The proposed amendment will change an erroneous reference in the first paragraph on page 3 of the OMFS for the location of the current conversion factors from Appendix B to Appendix C.

Factual Basis That Amendment is Necessary:

The proposed amendment is required to correct an erroneous cross-reference.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

Section Amended: Supplies and Materials

The existing section identifies what supplies and material are or are not separately reimbursable.

Specific Purpose of Amendment:

The proposed amendment will insert the following text after the asterisked paragraph on page 4 of the OMFS:

The following formulas only apply to health care providers such as physicians, physical therapists, Physician Assistants and Nurse Practitioners, dispensing items from their office or outpatient surgery facility

Factual Basis That Amendment is Necessary:

This amendment is necessary to clarify that this limitation was only intended to apply to medical providers and not wholesale or retail vendors or suppliers. Portions of the regulated community have expressed confusion on this point.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

Section Amended: Consultation Reports.

The existing section identifies which consultation reports are separately reimbursable.

Specific Purpose of Amendment:

The proposed amendment will insert the following text after the three bulleted sections on page 7 of the OMFS:

- *A report by a consulting physician where the claim does not meet the criteria of a “contested claim” as set forth in 8 CCR § 9793(b).*
- *A consultation code may not be billed when care or any part of care has been clearly transferred from the primary treating physician to the consulting physician. (See definition of Referral under the Evaluation and Management Section page 11.)*

Factual Basis That Amendment is Necessary

The first portion of this amendment is necessary to clarify that a report that does not meet the “contested claim” criteria for payment as a medical-legal expense is subject to the OMFS, not the medical-legal fee schedule. Portions of the regulated community have expressed confusion on this point.

The second portion of this amendment is necessary to clarify that when an injured worker's care has been transferred, in whole or in part, by the Primary Treating Physician to another physician, a consultation code and report may not be charged by the physician to whom care has been transferred. Portions of the regulated community have expressed confusion on this point.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

Section Amended: Missed Appointments

The existing section sets forth the procedure for identifying missed appointments.

Specific Purpose of Amendment

The proposed amendment will insert the following text after the first sentence on page 8 of the OMFS:

This code applies to both treatment and consultation appointments. For Medical-Legal missed appointments use the appropriate code from the Medical-Legal Fee Schedule - CCR 9795 (see Appendix C).

Factual Basis That Amendment is Necessary

This amendment is necessary to achieve the original intent of this provision that the missed appointment code applies to both treatment and consultation appointments. Portions of the regulated community have expressed confusion on this point.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

b. EVALUATION AND MANAGEMENT SECTION:

Section Amended: Levels of E/M Services

The existing section sets forth the procedure for identifying the appropriate level of evaluation and management services.

Specific Purpose of Amendment:

The proposed amendment will replace the third underlined section of the second full paragraph on page 13 of the OMFS with the following text:

The physician's interpretation of the results of diagnostic tests/studies (i.e. professional component) with preparation of *either a separate distinctly identifiable signed written report or a separate distinctly identifiable section of an overall report (i.e. PR-2, PR-3, Narrative Report or Doctor's First Report of Injury)* may also be reported separately, using the appropriate CPT code with the modifier -26 appended.

Factual Basis That Amendment is Necessary:

This amendment is necessary to clarify that the professional services component for a diagnostic test or other study, (e.g. an x-ray), is reimbursable without a separate interpretive report addressing only the test or study. Some bill review companies have interpreted the existing provision to require a separate interpretive report, and refused to pay the professional services component where the interpretive report is included as a component part in another report. The original intent behind the section was to allow either a separate and distinctively identifiable section incorporated into a required physicians' report, or, at the provider's option, a separate report. Portions of the regulated community have expressed confusion on this point, and litigation has resulted.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

c. ANESTHESIA SECTION

Section Amended: Other Modifiers.

The existing section sets forth optional modifier codes used for identifying various anesthesia related services and procedures.

Specific Purpose of Amendment:

The proposed amendment will delete Modifier - 51 on page 82 of the OMFS.

Factual Basis That Amendment is Necessary:

This amendment is necessary to correct an error in the original adoption of the OMFS. Anesthesia is a time based code, and its reimbursement is not affected by the number of procedures performed.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

d. RADIOLOGY AND NUCLEAR MEDICINE SECTION

Section Amended: Modifiers.

The existing section sets forth modifier codes used for identifying various radiology and nuclear medicine related services and procedures.

Specific Purpose of Amendment:

The proposed amendment will insert the following text at the end of the first paragraph on page 351 of the OMFS:

Modifier - 29 for global procedures (those procedures where one provider is responsible for both the professional and technical component) has been deleted. If a provider is billing for a global service, no modifier is necessary.

Factual Basis That Amendment is Necessary:

This amendment is necessary to clarify for the regulated public that modifier – 29 has been deleted from both CPT and the OMFS. Some payors are still requiring providers to bill using this no longer valid modifier. Portions of the regulated community have expressed confusion on this point.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

e. PATHOLOGY AND LABORATORY SECTION

Section Amended: Modifiers.

The existing section sets forth modifier codes used for identifying various pathology and laboratory related services and procedures.

Specific Purpose of Amendment:

The proposed amendment will insert the following text at the end of the first paragraph on page 394 of the OMFS.

Modifier - 29 for global procedures (those procedures where one provider is responsible for both the professional and technical component) has been deleted. If a provider is billing for a global service, no modifier is necessary.

Factual Basis That Amendment is Necessary:

This amendment is necessary to clarify for the regulated public that modifier – 29 has been deleted from both CPT and the OMFS. Some payors are still requiring providers to bill using this no longer valid modifier. Portions of the regulated community have expressed confusion on this point.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

f. MEDICINE SECTION

Section Amended: Modifiers.

The existing section sets forth modifier codes used for identifying various medicine related services and procedures.

Specific Purpose of Amendment:

The proposed amendment will insert the following text at the end of the first paragraph on page 451 of the OMFS.

Modifier - 29 for global procedures (those procedures where one provider is responsible for both the professional and technical component) has been deleted. If a provider is billing for a global service, no modifier is necessary.

Factual Basis That Amendment is Necessary:

This amendment is necessary to clarify for the regulated public that modifier – 29 has been deleted from both CPT and the OMFS. Some payors are still requiring providers to bill using this no longer valid modifier. Portions of the regulated community have expressed confusion on this point.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

Section Amended: Central Nervous System Assessment

The existing section sets forth the appropriate CPT code for reporting and billing for services related to the development of cognitive skills.

Specific Purpose of Amendment:

The proposed amendment will correct the erroneous reference in the first sentence on page 498 of the OMFS, concerning the development of cognitive skills, from CPT 97770 to 97799.

Factual Basis That Amendment is Necessary:

This amendment is necessary to correct a technical error in the OMFS as originally adopted. There is no CPT code 97770. The appropriate CPT code in the existing OMFS for the development of cognitive skills is CPT code 97799.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

g. PHYSICAL MEDICINE SECTION

Section Amended: Physical Medicine

The existing section sets forth the fee schedule for physical medicine services.

Specific Purpose of Amendment

The first proposed amendment will correct the erroneous reference in the fifth bulleted paragraph on page 503 of the OMFS from California Code of Regulations Section 9785(c) to Section 9785(f).

The second proposed amendment will insert the following text after the third sentence and just above the section heading for “MODALITIES” on page 505 of the OMFS:

The appropriate physical medicine code for the use of a transcutaneous electrical nerve stimulator (TENS unit) is 97014.

Factual Basis That Amendment is Necessary:

The first proposed amendment is necessary to conform the OMFS to amendments in Title 8, Cal. Code of Regs., Section 9785. The amendments were effective January 1, 1999.

The second amendment is necessary to clarify for the regulated public that the appropriate physical medicine code for using a TENS unit – a transcutaneous electrical nerve stimulator - in a physical medical provider’s office is 97014. Some providers are incorrectly using surgical code 64550. Surgical code 64550 is the appropriate code for TNS – transcutaneous nerve stimulation - during a surgical procedure.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

h. MANIPULATIVE TREATMENT SECTION

Section Amended: Specific Billing Instructions

The existing section sets forth the fee schedule for Osteopathic manipulative treatment.

Specific Purpose of Amendment:

The proposed amendment will delete the reference to the physical medicine ground rules in second paragraph of the Osteopathic Manipulation section on page 510 of the OMFS.

Factual Basis That Amendment is Necessary:

The proposed amendment is necessary to correct a technical error and clarify that the physical medicine ground rules do not apply to osteopathic manipulation.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

i. ORTHOTICS AND PROSTHETICS

Section Adopted: Prosthetics Maximum Reimbursement Rates

The existing section sets forth the fee schedule for orthotics and prosthetics services and devices.

Specific Purpose of Amendment:

The proposed amendment will adopt the prosthetics section that was inadvertently omitted from the current Official Medical Fee Schedule.

Factual Basis That Amendment is Necessary:

The prosthetics maximum reimbursement section was inadvertently omitted from the current Official Medical Fee Schedule.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

2. SECTION AMENDED: SECTION 9791.1 - THE OFFICIAL MEDICAL FEE SCHEDULE.

The existing section incorporates by reference the Official Medical Fee Schedule as revised April 1, 1999.

Specific Purpose of Amendments:

The proposed amendment to Section 9791.1 will incorporate by reference the Official Medical Fee Schedule as revised as of the effective date of the amendments proposed in this rulemaking proceeding.

Factual Basis That Amendments are Necessary:

The proposed amendment to Section 9791.1 is required to properly incorporate by reference the amendments to the OMFS proposed in this rulemaking. The Official Medical Fee Schedule is an extremely large document that cannot be published in its entirety in the Code of Regulations.

In order to give the regulated public notice that the OMFS has the legal effect of a regulation, it has been incorporated by reference into Section 9791.1 in accordance with the provisions of Title 1, CCR Section 20(c)(1-5). These sections set forth the procedure by which a document may properly be incorporated by reference.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

3. SECTION AMENDED: SECTION 9792.5 - THE OFFICIAL MEDICAL FEE SCHEDULE.

The existing section sets forth the requirements for timely payment or objection to billings for medical treatment subject to the fee schedule, and provides for increased fees and interest for untimely objections and/or payment.

Specific Purpose of Amendments:

The proposed amendment to section 9792.5(a)(1) will conform this section to the provisions of Sections 9785, 9786, 9792.5, 9793, and 9794. These sections all use the term “claims administrator” instead of “employer.”

The proposed amendment to Section 9792.5(a)(5) will conform this section to the legislature’s amendment of Labor Code Section 4603.2(b) (Chapter 124, Stats. 1999,) to include both employee and/or employer selected treating physicians by cross-referencing the definition of the term “treating physician” to the definition of “primary treating physician” provided by Section 9785(a)(1).

The proposed amendments to Section 9792.5(b), (d) and (e) will conform these sections to the legislature’s amendment of Labor Code Section 4603.2(b) (Chapter 124, Stats. 1999,) to require that if a medical billing or a portion thereof is contested, denied, or considered incomplete, the physician shall be notified, in writing, that the billing is contested, denied, or considered incomplete, within 30 working days after receipt of the billing by the employer.

The proposed adoption of the second paragraph of Section 9792.5(b) will clarify that, for purposes of this section, treatment which is provided or authorized by the treating physician includes but is not limited to treatment provided by a “secondary physician” as that term is defined by section 9785(a)(2).

The proposed repeal of Section 9792.5(f) is necessary as this section conflicts with the provisions of Labor Code Section 4603.2, which establishes that interest on a properly documented bill accrues from the date of receipt of the bill. The current regulation provides that for a case in which injury is initially denied and then later accepted, the interest begins to accrue 60 days after liability is accepted. In the opinion on Boehm & Associates v. WCAB, (Lopez) (1999) 76 Cal. App. 4th 513, the Court of Appeal stated that this provision conflicts with Labor Code Section 4603.2, and held that interest accrues beginning 60 days after receipt of the bill regardless of the date liability for the claim is accepted or adjudicated. Existing subsection 9792.5(g) is being renumbered to conform to the repeal.

The proposed addition of Labor Code Section 4603.5 to the authority note will inform the regulated public that this section gives the Administrative Director the authority to issue regulations to carry out the requirements of Article 2, Chapter 2, Part 2 of Division 4 of the Labor Code. This article deals with medical and hospital treatment.

The proposed addition of Labor Code Section 5307.1 to the reference note will inform the regulated public that this section contains rules integral to establishing fee levels payable under the OMFS.

Factual Basis That Amendments are Necessary:

The proposed amendment to section 9792.5(a)(1) is necessary to improve the clarity of Section 9792.5, and will conform this section to the provisions of Sections 9785, 9786, 9792.5, 9793, and 9794. These sections use the term “claims administrator” instead of “employer.”

The proposed amendments to Section 9792.5, subsections (a)(5), (b), (d), (e) and (f) are required to conform these sections to recent statutory changes.

The adoption of the proposed second paragraph of Section 9792.5(b) is required to clarify that, for purposes of this Section, treatment which is provided or authorized by the treating physician includes but is not limited to treatment provided by a “secondary physician” as that term is defined by section 9785(a)(2). This is necessary to carry out the requirements of Labor Code Section 4603.2(b) that these payment rules apply to treatment that is either provided by or authorized by the treating physician. The term “treating physician” can include both primary and secondary treating physicians.

The proposed repeal of Section 9792.5(f) is required by the Court of Appeal’s opinion in Boehm & Associates v. WCAB, (Lopez) (1999) 76 Cal. App. 4th 513. Existing subsection 9792.5(g) is being renumber to conform to the repeal.

The proposed addition of Labor Code Section 4603.5 to the authority note is necessary to inform the regulated public that the Administrative Director has the authority to issue regulations to carry out the requirements of Article 2, Chapter 2, Part 2 of Division 4 of the Labor Code. This article deals with medical and hospital treatment.

The proposed addition of Labor Code Section 5307.1 to the reference note will inform the regulated public that this section contains rules integral to establishing fee levels payable under the OMFS.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

B. REVISIONS TO THE MEDICAL-LEGAL FEE SCHEDULE

Labor Code Section 5307.6 requires the Administrative Director to “adopt and revise a fee schedule for medical-legal expenses as defined by Section 4620 ... at the same time he or she adopts and revises the medical fee schedule pursuant to Section 5307.1.” As the OMFS is being revised to make technical revisions, clarifications and corrections of typographical errors, it is also appropriate to make technical

revisions, clarifications and corrections of typographical errors in the medical-legal fee schedule at this time.

1. SECTION AMENDED: SECTION 9793 - THE MEDICAL-LEGAL FEE SCHEDULE.

The existing section sets forth the definitions of terms concerning medical-legal expenses and comprehensive medical-legal evaluations.

Specific Purpose of Amendment:

The proposed amendment to Section 9793(f) will correct a technical error and conform this subsection to Section 9795(c)/ML 101 which provides that a follow-up medical-legal evaluation is to be performed within 9 months, not one year.

The proposed non-substantive amendment to Section 9793(i) will conform the cross-reference to the repeal of Section 9785.5, and the inclusion of its requirements into Section 9785(a)(1) as amended effective January 1, 1999.

Factual Basis That Amendment is Necessary:

The proposed amendment to Section 9793(f) is required to correct a technical error and conform this subsection to Section 9795(c)/ML 101.

The proposed amendment to Section 9793(i) is required to conform this section to a recent change in the regulations to which it cross-references.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

2. SECTION AMENDED: SECTION 9795 - THE MEDICAL-LEGAL FEE SCHEDULE.

The existing section sets forth the reasonable level of fees for medical-legal expenses, follow-up, supplemental and comprehensive medical-legal evaluations and medical-legal testimony.

Specific Purpose of Amendment:

The proposed amendment to Section 9795(b) will clarify that the all-inclusive fee for each medical-legal evaluation procedure includes reimbursement for any transcription services used in the preparation of a medical-legal report.

The proposed amendment to Section 9795(d) will provide that the –93 interpreter modifier does not apply to ML 101. Where Modifier –93 is applicable, the value of the procedure is multiplied by 1.1 to compensate the doctor for the increased time necessary for the examination. Since ML 101 is a timed code, the length of time to perform the exam is already accounted for in the higher fee resulting from the commensurately longer evaluation attributable to translation time.

Factual Basis That Amendment is Necessary:

The amendment is necessary to prevent dual reimbursement for the additional evaluation time required for a patient who requires an interpreter.

Small Business Impact

This regulation will not have a significant effect on small business.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No alternative was considered which would be either more effective than or equally as effective as and less burdensome than the proposed regulations.

TECHNICAL, THEORETICAL, OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS

The Division did not rely upon any technical, theoretical, or empirical studies, reports, or documents in proposing the above-identified amendments.

REASONABLE ALTERNATIVES TO THE PROPOSED AMENDMENTS AND REASONS FOR REJECTING THOSE ALTERNATIVES

The Division considered three alternatives. The first alternative would have been to propose no amendments at this time. This alternative was rejected because portions of the existing OMFS, MLFS and their related regulations have created problems and thus need to be updated.

The second alternative was to propose amendments to address only some of the problems discussed above in this Initial Statement of Reasons. This alternative was rejected because it is more efficient to address as many significant issues as can be feasibly addressed in one rulemaking.

The third alternative would have been to address more issues than are discussed in this Initial Statement of Reasons. This alternative was rejected because a comprehensive review of the OMFS will be undertaken as part of the probable adoption of an RBRVS (resource based relative value scale) based fee

schedule. The adoption of an RBRVS fee schedule will render moot the issues considered but deferred from this rulemaking.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Division is not aware that there will be any adverse impact on small business. Thus, the Division has not identified any alternatives that would lessen any adverse impact on small business. The Division invites the submission during the public comment periods for this rulemaking of comments identifying any possible adverse impacts on small businesses, and the proposing of alternatives that would lessen any adverse impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulatory changes are technical revisions, clarifications and corrections of typographical errors in existing provisions of the OMFS, its related regulations and the medical-legal fee schedule.

The overall economic effects of the proposed changes will therefore be minimal.

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